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10/559,860	12/06/2005	Ali Nilfuroshan	8048-003-US	7437
32301 7590 06/22/2007 CATALYST LAW GROUP, APC 9710 SCRANTON ROAD, SUITE S-170 SAN DIEGO, CA 92121			EXAMINER NGUYEN, SON T	
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/559,860

Applicant(s)

NILFUROSHAN, ALI

Examiner

Son T. Nguyen

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 December 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-60 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-60 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 06 December 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

SON T. NGUYEN
PRIMARY EXAMINER

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date 12/6/05.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 12,47 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. It is unclear how the cover is made out of hook and loop because that would seem quite uncomfortable for the animal, and hook/loop are used for fasteners and not really a material for a cover.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. **Claims 1-3,5-7,12,17-21,25-28,31-33,38,40,42,44-47,49,52,54-56,58-60** are rejected under 35 U.S.C. 102(b) as being anticipated by Tadauchi et al. (JP10113088A). A translation from the Japan Patent Office is included and employed in the below rejection.

For claim 1, Tadauchi et al. teach an animal cover adapted to conform to the shape of an animal's body to deliver a temperature to a specific targeted area of the body, the animal cover comprising: a body 1 of the animal cover having an interior and exterior side; a plurality of cavities 2,22 strategically located within the body of the

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animal cover to deliver a temperature altering regimen 21 to a targeted area of the animal's body; and a temperature altering device 21.

For claim 2, Tadauchi et al. teach wherein the plurality of cavities are strategically located within the body of said animal cover to deliver a temperature altering regimen to an area of the animal's anatomy such as neck.

For claim 3, Tadauchi et al. teach wherein the plurality of cavities are strategically located within the body of said animal cover to deliver a temperature altering regimen to the animal's muscle groups selected from the group consisting of: spine (near head region) and neck.

For claim 5, Tadauchi et al. teach wherein the temperature altering device is located within the plurality of cavities (see fig. 3).

For claim 6, Tadauchi et al. teach wherein the temperature altering device is permanently located in the plurality of cavities if the user does not remove it.

For claim 7, Tadauchi et al. teach wherein the temperature altering device is removably located in the plurality of cavities (see abstract and translation provided).

For claims 12,17, Tadauchi et al. teach wherein the body of said animal cover is made of a material selected from hook and loop, or temperature permeable material (page 3, [0012] of translation of Tadauchi et al.).

For claim 18, Tadauchi et al. teach wherein the interior side of said animal cover comprises a material that is permeable to temperature (page 3, [0012] of translation of Tadauchi et al.).

For claim 19, Tadauchi et al. teach wherein the body of said animal cover comprises a material 32 to facilitate the releasable attachment of the cavities to said body, said material being selected from the group consisting of hook, loop 32, snaps, buttons, zippers and combinations thereof (page 2 [0008],[0014] and see abstract).

For claim 20, Tadauchi et al. teach wherein the interior side of said animal cover comprises a loop material 32 to facilitate the releasable attachment of the cavity. See also figs. 1,3 where the device or coolant 2 is placed inside the cover with hook/loop material 32.

For claim 21, Tadauchi et al. teach wherein the cavity comprises a hook material 32. See also abstract.

For claim 25, Tadauchi et al. teach wherein the plurality of cavities further comprise a material on the interior side of the body of said animal cover that is permeable to temperature emitted from the temperature altering device towards the body of the animal for maximum efficiency of temperature transfer (see page 2, [0009], [0010]).

For claim 26, Tadauchi et al. teach wherein the plurality of cavities are adjustable about the body of the animal cover for optimal placement on a variety of differently sized animals (see page 2, [0009],[0010]).

For claim 27, Tadauchi et al. teach wherein the plurality of cavities are adjustable about the body of the animal cover using a releasable attachment mechanism selected from the group consisting of hook and loop 32, snaps, fasteners, sliding cavities and

oversized cavities compared to enclosed temperature altering device (see page 2, [0009],[0010], page 3,[0014]).

For claim 28, Tadauchi et al. teach wherein the releasable attachment mechanism is hook and loop (see page 3,[0014]).

For claim 31, Tadauchi et al. teach wherein the animal is a horse (see fig. 2).

For claim 32, Tadauchi et al. teach wherein said animal cover is a horse blanket and the animal is a horse. See fig. 2. The cover of Tadauchi et al. can be considered a horse blanket covering the head portion. A blanket is merely considered as a cover, since Applicant has not further defined the blanket.

For claim 33, Tadauchi et al. teach a method for delivering a temperature altering regimen comprising the steps of: altering the temperature of a temperature altering device 21 portion of an animal cover 1 wherein said animal cover is designed or fitted to hold said temperature altering device in a cavity 22 and thereby deliver a temperature altering regimen to specific areas (the head) of an animal's body (page 2, [0009],[0010], page 4, [0019]); placing the animal cover on the body of an animal (see fig. 2); optimally locating said temperature altering device is near a specific area of said animal's body [page 2, [0009], page 4, [0019]); and allowing a temperature altering regimen to run its course (page 5, [0027], page 6, [0029]).

For claim 38, Tadauchi et al. teach wherein the step of placing the animal cover on the body of an animal comprises adjusting and properly aligning said animal cover to allow for the optimally locating the temperature altering device at an area of the animal's

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body to receive a temperature altering regimen (page 2, [0006],[0007],[0008]). See also fig. 2 the proper alignment of the cover on the horse.

For claim 40, Tadauchi et al. teach wherein the step of optimally locating the temperature altering device at an area of the animal's body further comprises strategically placing releasable cavities 2,22 having temperature altering devices 21 on the body of the animal cover (page 2, [0009], page 3, [0014], page 4, [0019],[0020]).

For claim 42, Tadauchi et al. teach wherein the step of allowing the temperature altering regimen to run its course comprises letting the temperature altering device deliver temperature to the animal's body for an optimally defined period of time (page 5, [0027], page 6, [0028],[0029]).

For claim 44, Tadauchi et al. teach wherein the animal is a horse. See fig. 2.

For claim 45, Tadauchi et al. teach wherein said animal cover is a horse blanket and the animal is a horse. See fig. 2. The cover of Tadauchi et al. can be considered a horse blanket covering the head portion. A blanket is merely considered as a cover, since Applicant has not further defined the blanket.

For claim 46, Tadauchi et al. teach an animal cover adapted to conform to the shape of an animal's body (the head portion) to deliver a temperature to a specific targeted area of the body (page 2,[0009],page 4,[0019],[0020]), the animal cover comprising: a body 1 of the animal cover having at least an interior and exterior side; and a plurality of releasably attached cavities 2,22.

For claim 47, Tadauchi et al. teach wherein the body of said animal cover comprises a material selected from the group consisting of hook, loop, and/or temperature permeable material (page 3, [0012] of translation of Tadauchi et al.).

For claim 49, Tadauchi et al. teach wherein the body of said animal cover comprises a temperature permeable material on the interior side of said animal cover (page 3, [0012] of translation of Tadauchi et al.).

For claim 52, Tadauchi et al. teach wherein the body of said animal cover comprises a loop material on the interior side of said animal cover. See figs. 1,3 where the device or coolant 2 is placed inside the cover with hook/loop material 32.

For claim 54, Tadauchi et al. teach wherein the plurality of releasably attached cavities comprise a release mechanism 32 selected from the group consisting of hook, loop, snaps, buttons, zippers and combinations thereof and the animal cover comprises a complementary release mechanism 32. See figs. 1,3

For claim 55, Tadauchi et al. teach wherein the plurality of releasably attached cavities comprise a hook material or a loop material and the animal cover comprises the complimentary loop material or hook material, respectively (page 3,[0014] and abstract).

For claim 56, Tadauchi et al. teach wherein the plurality of releasably attached cavities releasably attach to the interior side of the animal cover. See fig. 1.

For claim 58, Tadauchi et al. teach a cavity 2,22 comprising a means 32 for releasably attaching said cavity to an animal cover 1 further comprising an interior side and an exterior side (see fig.1).

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For claim 59, Tadauchi et al. teach wherein said means for releasably attaching said cavity to an animal cover is a means selected from the group consisting of hook and loop, zipper, snaps, buttons and combinations thereof (page 3,[0014] and abstract).

For claim 60, Tadauchi et al. teach wherein said means for releasably attaching said cavity to an animal cover is a hook and loop means wherein the cavity comprises either a hook material or a loop material and the animal cover comprises the complementary loop material or hook material. See figs. 1,3 and page 3,[0014].

5. **Claims 1-8,10,12,17,18,24,25,31,33,35,37,38,42,44** are rejected under 35 U.S.C. 102(b) as being anticipated by Beeghly et al. (5537954).

For claim 1, Beeghly et al. teach an animal cover 10 adapted to conform to the shape of an animal's body to deliver a temperature to a specific targeted area of the body, the animal cover comprising a body 12 having an interior and exterior side; a plurality of cavities 14,21,22,20,34 strategically located within the body of the animal cover to deliver a temperature altering regimen to a targeted area of the animal's body; and a temperature altering device 40.

For claims 2-4, Beeghly et al. teach wherein the plurality of cavities are strategically located within the body of said animal cover to deliver a temperature altering regimen to an area of the animal's anatomy selected from the group consisting of." neck, withers, spine, scapula, back, loin, croup, thigh, buttock, stifle, abdomen, girth, elbow, forearm, arm, chest, shoulder and neck. See figures.

For claims 5-7, Beeghly et al. teach the temperature altering device being removably located within the cavities (col. 5, lines 52-67) or can be permanently located by not removing it from the cavities.

For claim 8, Beeghly et al. teach the cavities form a sealable pocket by snaps 36.

For claim 10, Beeghly et al. teach the altering device is removed from the cover and is brought to a desired temperature by placing the altering device in a heated environment until the altering device reaches a desired temperature and can be returned to the cover and used to deliver a temperature altering regimen to an animal (col. 5, lines 52-68 and col. 6, lines 1-39).

For claim 12, Beeghly et al. teach wherein the body of said animal cover is made of a material selected from the group consisting of hook, loop, temperature reflective material, temperature permeable material, material that wicks moisture, and combinations thereof. Col. 5, line 18, col. 6, lines 33-39.

For claim 17, Beeghly et al. teach wherein the body of said animal cover comprises a material that is permeable to temperature (col. 5, line 18, col. 6, lines 33-39).

For claim 18, Beeghly et al. teach wherein the interior side of said animal cover comprises a material that is permeable to temperature (col. 5, line 18, col. 6, lines 33-39). The material's thickness constitute an exterior and an interior, and thus, both exterior and interior comprise this material that allow permability of temperature.

For claim 24, Beeghly et al. teach wherein the plurality of cavities further comprise a material on the exterior side of the body of said animal cover that will reflect

the temperature emitted from the temperature altering device towards the body of the animal for maximum efficiency of temperature transfer. Col. 5, lines 35-51.

For claim 25, Beeghly et al. teach wherein the plurality of cavities further comprise a material on the interior side of the body of said animal cover that is permeable to temperature emitted from the temperature altering device towards the body of the animal for maximum efficiency of temperature transfer. Col. 5, lines 35-51. The material's thickness constitute an exterior and an interior, and thus, both exterior and interior comprise this material that allow permability of temperature.

For claim 31, Beeghly et al. teach wherein the animal is a dog. See figures.

For claim 33, Beeghly et al. teach a method for delivering a temperature altering regimen comprising the steps of: altering the temperature of a temperature altering device 40 portion of an animal cover 10 wherein said animal cover is designed or fitted to hold said temperature altering device in a cavity 14 and thereby deliver a temperature altering regimen (col. 5, lines 52-65) to specific areas of an animal's body; placing the animal cover on the body of an animal (see figures); optimally locating said temperature altering device is near a specific area of said animal's body (see areas where pockets 14 and device 40 are located); and allowing a temperature altering regimen to run its course.

For claim 35, Beeghly et al. teach wherein the step of altering the temperature of an animal cover comprises separating the temperature altering device from the body of the animal cover (by removing the device 40 from pocket 14), placing said temperature altering device into a refrigeration or heating environment (col. 6, lines 5-10), allowing

said temperature altering device to reach a desired temperature (col. 6, lines 5-10), and replacing said temperature altering device into said animal cover (col. 6, lines 5-10).

For claim 37, Beeghly et al. teach wherein the temperature altering device is removed from the cavity, thus only the temperature altering device is separated from body of the animal cover, placed into a refrigeration or heating environment' allowed to reach a desired temperature, and is then replaced into a cavity of said animal cover. Col. 6, lines 1-16.

For claim 38, Beeghly et al. teach wherein the step of placing the animal cover on the body of an animal comprises adjusting and properly aligning said animal cover to allow for the optimally locating the temperature altering device at an area of the animal's body to receive a temperature altering regimen. See figures for proper fitting of the garment on the dog.

For claim 42, Beeghly et al. teach wherein the step of allowing the temperature altering regimen to run its course comprises letting the temperature altering device deliver temperature to the animal's body for an optimally defined period of time. Inherent in the teaching of Beeghly et al. to let the altering device 40 deliver temperature until the animal feels better.

For claim 44, Beeghly et al. teach wherein the animal is a dog. See figures.

6. **Claims 1,26,29,30** are rejected under 35 U.S.C. 102(b) as being anticipated by Daneshvar (5383893).

Daneshvar teaches an animal cover adapted to conform to the shape of an animal's body to deliver a temperature altering regimen (col. 27, lines 11-19) to a an

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animal's stifle, the animal cover comprising: a body (20 or 84) of the animal cover having an interior and exterior sides; a flap (the area where ref. 26 or 98 is located) located on the body of the animal cover, wherein said flap wraps from the outer thigh around to the inner thigh 24,32 and is adjustably attached to the buttock and/or croup area 23,30 of the animal cover (see figs. 1,2,7); a cavity (refs. 40,56, col. 5, lines 30-40 and col. 6, lines 40-46, by placing the VELCRO 54 on the flap as desired) located on said flap; and a temperature altering device 36 (also, col. 27, lines 11-19). In addition, Daneshvar teaches the cavity is adjustable by the VELCRO 54 placed wherever desired (see also col. 5, lines 30-40 and col. 6-lines 40-46).

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. **Claims 9,13,14,34,39,43** are rejected under 35 U.S.C. 103(a) as being unpatentable over Beeghly et al. (as above).

For claim 9, Beeghly et al. are silent about wherein the temperature altering device is brought to a desired temperature by placing the entire animal cover in a refrigerated or heated environment until said temperature altering device reaches a desired temperature and can be used to deliver a temperature altering regimen to an animal. It would have been obvious to one having ordinary skill in the art at the time the invention was made to place the entire cover of Beeghly et al. in the heated

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environment, depending on the user's preference to do so if he/she does not wish to remove the altering device from the pocket.

For claims 13,14, Beeghly et al. teach a fabric material so it is under the assumption that, since the material is a fabric, the material will wick moisture. However, if not, it would have been obvious to one having ordinary skill in the art at the time the invention was made to manufacture the cover of Beeghly et al. out of a wick material to wick moisture, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious choice. Note, the material's thickness constitute an exterior and an interior, and thus, both exterior and interior comprise this material that allow wicking of moisture.

For claim 34, Beeghly et al. are silent about wherein the step of altering the temperature of an animal cover comprises placing the entire animal cover into a refrigeration or heating environment and allowing the temperature altering device to reach a desired temperature. It would have been obvious to one having ordinary skill in the art at the time the invention was made to include the step of placing the entire cover of Beeghly et al. in the heated environment, depending on the user's preference to do so if he/she does not wish to remove the altering device from the pocket.

For claim 39, Beeghly et al. are silent about wherein the step of placing the animal cover on the animal further comprises wrapping the animal cover around the outer thigh and the inner thigh of the animal to optimally locate a temperature altering device between the stifle and the groin of the animal's body. It would have been obvious to one having ordinary skill in the art at the time the invention was made to

include the step of wrapping the cover of Beeghly et al. around the outer thigh and the inner thigh of the animal, depending on what area of the animal's body needs temperature treatment.

For claim 43, Beeghly et al. teach are silent about wherein the step of allowing the temperature altering regimen to run its course further comprises repeating the steps of altering the temperature of the animal cover and placing the animal cover on the body of an animal. It would have been obvious to one having ordinary skill in the art at the time the invention was made to include the step of repeating the steps of altering the temperature of the animal cover of Beeghly et al. and placing the cover on the body of the animal, depending on the condition of the animal to be treated.

9. **Claims 11,36,40,46,47,49-51,54-57** are rejected under 35 U.S.C. 103(a) as being unpatentable over Beeghly et al. as applied to claims 1,10,33,35 above, and further in view of Tadauchi et al. (as above).

For claim 11, Beeghly et al. are silent about wherein the temperature altering device is within the plurality of cavities which are releasably attached to said animal cover.

As mentioned in the above, Tadauchi et al. teach an animal cover comprising cavities 2 that are adjustable (by using VELCRO 32) about different areas of the animal's body. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have the pockets of Beeghly et al. be adjustable by employing VELCRO as taught by Tadauchi et al. in order to allow a user to move or adjust the pockets to different areas of the cover.

For claim 36, Beeghly et al. teach the temperature altering device are separated from body of the animal cover, placed into a refrigeration or heating environment, allowed to reach a desired temperature, and replaced onto said animal cover (col. 6, lines 1-16). However, Beeghly et al. are silent about wherein the temperature altering device remains within a cavity, said cavity being releasably attached to said body of the animal cover, thus the cavity and the temperature altering device are separated from body of the animal cover, placed into a refrigeration or heating environment, allowed to reach a desired temperature, and replaced onto said animal cover.

As mentioned in the above, Tadauchi et al. teach an animal cover comprising cavities 2 that are adjustable (by using VELCRO 32) about different areas of the animal's body. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have the pockets of Beeghly et al. be adjustable by employing VELCRO as taught by Tadauchi et al. in order to allow a user to move or adjust the pockets to different areas of the cover.

For claim 40, Beeghly et al. teach wherein the step of optimally locating the temperature altering device at an area of the animal's body further comprises strategically placing cavities having temperature altering devices on the body of the animal cover. However, Beeghly et al. are silent about strategically placing releasable cavities having temperature altering devices on the body of the animal cover.

As mentioned in the above, Tadauchi et al. teach an animal cover comprising cavities 2 that are adjustable (by using VELCRO 32) about different areas of the animal's body. It would have been obvious to one having ordinary skill in the art at the

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time the invention was made to have the pockets of Beeghly et al. be adjustable by employing VELCRO as taught by Tadauchi et al. in order to allow a user to move or adjust the pockets to different areas of the cover.

For claim 46, Beeghly et al. teach the limitations as mentioned above. Beeghly et al. lack the plurality of releasably attached cavities. As mentioned in the above, Tadauchi et al. teach the releasably attached cavities. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have the pockets of Beeghly et al. be adjustable by employing VELCRO as taught by Tadauchi et al. in order to allow a user to move or adjust the pockets to different areas of the cover.

For claim 47, the limitation has already been explained, so please see the above teaching of Beeghly et al. as modified by Tadauchi et al., especially Beeghly et al.

For claims 49-51, Beeghly et al. as modified by Tadauchi et al. (emphasis on Beeghly et al.) teach the limitation as claimed in claims 49-51 in the above, so please see the above. The moisture is wicked away from the animal's body, since that is the function of the material for the garment 12 of Beeghly et al. as modified by Tadauchi et al.

For claims 54-55, Beeghly et al. as modified by Tadauchi et al. (emphasis on Tadauchi) teach the limitation as claimed in claims 54-55 in the above, so please see the above.

For claim 56, in addition to the above, Tadauchi et al. further teach wherein the plurality of releasably attached cavities releasably attach to the interior side of the animal cover (see the above discussion for Tadauchi). It would have been obvious to

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one having ordinary skill in the art at the time the invention was made to have the plurality of releasably attached cavities of Beeghly et al. as modified by Tadauchi et al. be releasably attach to the interior side of the animal cover as further taught by Tadauchi et al. in order to allow a user to place the temperature altering device inside or in the interior side of the cover to relieved the desired area of the animal's body.

For claim 57, Beeghly et al. already teach the cavities are to be located on the exterior side of the cover. However, as stated in the above, Beeghly's cavities are not releasably attach to the exterior side of the animal cover. Tadauchi et al. teach the releasability concept for the cavities to allow a user to place the temperature altering device in different areas of the cover as desired. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have the cavities of Beeghly et al. as modified by Tadauchi et al. be releasably attach to the exterior side of the animal cover in order to allow a user to place the temperature altering device in different areas of the cover as desired.

10. **Claims 15,16,48** are rejected under 35 U.S.C. 103(a) as being unpatentable over Beeghly et al. as applied to claims 1,46,47 above, and further in view of LaBelle (6089194).

Beeghly et al. are silent about wherein the body of said animal cover comprises a material that reflects temperature. LaBelle teaches heat reflective garment for an animal, to which heat is temperature. It would have been obvious to one having ordinary skill in the art at the time the invention was made to manufacture the cover of Beeghly et al. out of a material that reflects temperature such as heat as taught by

LaBelle, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use (to keep the animal cool) as a matter of obvious choice. See *Sinclair & Carroll Co. v. Interchemical Corp.*, 325 U.S. 327, 65 USPQ 297 (1945) and *In re Leshin*, 125 USPQ 416.

11. **Claims 22-23,53** are rejected under 35 U.S.C. 103(a) as being unpatentable over Tadauchi et al. as applied to claims 1,19,46,47 above, and further in view of Beeghly et al. (as above).

As mentioned in the above, Tadauchi et al. teach hook and loop material or VELCRO 32 for releasably attaching the cover to the cavity or vice-versa. As shown in fig. 1 of Tadauchi et al., the VELCRO is placed inside the cover and not on the exterior side of said animal cover.

Beeghly et al. teach cavities located on the exterior side of the cover. It would have been obvious to one having ordinary skill in the art at the time the invention was made to employ the cavities of Tadauchi et al. on the exterior side of the cover as taught by Beeghly et al., which means that the VELCRO 32 of Tadauchi et al. would also be placed on the exterior side of the cover, since it is has been held that a mere reversal of the essential working parts of a device involves only routine skill in the art. In *re Einstein*, 8 USPQ 167.

12. **Claim 41** is rejected under 35 U.S.C. 103(a) as being unpatentable over Tadauchi et al. (as above).

Taduachi et al. are silent about wherein the animal cover is on the animal and then the releasable cavities are optimally located on the body of the animal cover. It

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would have been obvious to one having ordinary skill in the art at the time the invention was made to have the animal cover on the animal and then the releasable cavities are optimally located on the body of the animal cover in the method of Tadauchi et al., depending on the user's preference as to which ways the cavities can be placed easier, i.e. already placed on the cover or placed after the cover is on the animal, since the cavities can be moved around as desired.

Double Patenting

13. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

14. **Claims 1-32,46-60** are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over **claims 1-5,7,8,11-17** of copending Application No. 10/807695. Although the conflicting claims are not identical, they are not patentably distinct from each other because both applications claim the

same animal cover comprising a body having interior and exterior sides, a temperature altering device, a plurality of cavities. In addition, both applications claim the same positions of the temperature altering device placed on the cover.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Conclusion

15. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Son T. Nguyen whose telephone number is 571-272-6889. The examiner can normally be reached on Mon-Thu from 10:00am to 5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter M. Poon can be reached on 571-272-6891. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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A handwritten signature in black ink, appearing to read 'Son T Nguyen', written in a cursive style.

Son T Nguyen
Primary Examiner
AU 3643